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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 MMCA GROUP, LTD.,

11 Plaintiff,

12 v.  
13

14 HEWLETT-PACKARD COMPANY, et al.,

15 Defendants  
16

No. C-06-7067 MMC

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE AMENDED  
COMPLAINT; DENYING AS MOOT  
BRI'S MOTION TO DISMISS CLAIMS  
ASSERTED AGAINST PINKERTON  
EUROPE; DENYING AS MOOT  
HEWLETT-PACKARD'S MOTION TO  
CONTINUE HEARINGS ON MOTIONS  
FOR LEAVE TO AMEND AND TO  
DISMISS; VACATING HEARINGS**

(Docket Nos. 16, 59, 70)

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18 Before the Court are three motions: (1) the motion filed January 8, 2007 by Business  
19 Risks International Limited (U.K.) ("BRI") to dismiss the claims asserted against Pinkerton  
20 Consulting & Investigations Europe ("Pinkerton Europe"); (2) the motion filed February 2,  
21 2007 by plaintiff for leave to file an amended complaint deleting Pinkerton Europe as a  
22 defendant and adding BRI and Pinkerton's, Inc. as defendants; and (3) the motion filed  
23 February 9, 2007 by defendants Hewlett-Packard Company, Robert Cozzolina and Warren  
24 Rother (collectively, "HP") to continue the hearings on the above-referenced motions.  
25 Having considered the papers filed in support of and in opposition to the motions, the Court  
26 finds the matters appropriate for decision without oral argument, hereby VACATES the  
27 February 23, 2007 hearing on the motion to dismiss, as well as the March 9, 2007 hearing  
28 on the motion for leave to amend, and rules as follows.

### 1           **A. Motion to Amend**

2           The Court begins with plaintiff's motion for leave to amend. Where, as here, a  
 3 responsive pleading has been filed to the complaint,<sup>1</sup> the plaintiff may amend the complaint  
 4 "only by leave of court or by written consent of the adverse party; and leave shall be freely  
 5 given when justice so requires." See Fed. R. Civ. P. 15(a). Generally, leave to amend  
 6 should be granted with "extreme liberality." See Eminence Capital, LLC v. Aspeon, Inc.,  
 7 316 F.3d 1048, 1051 (9<sup>th</sup> Cir. 2003). In deciding whether justice requires granting leave to  
 8 amend, factors to be considered include the presence or absence of undue delay, bad faith  
 9 or dilatory motive on the part of the moving party, repeated failure to cure deficiencies by  
 10 previous amendments, undue prejudice to the opposing party, and futility of the proposed  
 11 amendment. See id. at 1052 (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). "[T]he  
 12 consideration of prejudice to the opposing party carries the greatest weight." Id. "Absent  
 13 prejudice, or a strong showing of any of the remaining Foman factors, there exists a  
 14 presumption under Rule 15(a) in favor of granting leave to amend." Id. (emphasis in  
 15 original).

16           Plaintiff states it seeks leave to amend for the purpose of "nam[ing] the correct  
 17 parties engaged in the wrongful conduct . . . for which it has sought relief." (See Motion to  
 18 Amend at 5:21-23.) According to plaintiff, it initially named Pinkerton Europe as a  
 19 defendant because it believed Pinkerton Europe was a separate corporation that engaged  
 20 in wrongful conduct against plaintiff. (See Motion to Amend at 5:23-26.) Plaintiff learned of  
 21 BRI's existence when BRI moved to dismiss all claims asserted against Pinkerton Europe  
 22 and argued BRI "does business as Pinkerton [Europe]." (See Motion to Dismiss at 2:25;  
 23 Cherry Decl. ¶ 4.) When it received BRI's motion, plaintiff conducted additional research  
 24 and learned that BRI "appears to be a failing business with a small number of employees  
 25 and little financial capital" that is wholly-owned by Pinkerton's, Inc. (See Motion to Amend  
 26 at 6:17-21; Cherry Decl. ¶ 7 and Ex. C.) Plaintiff thus seeks leave to amend its complaint

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 28           <sup>1</sup> Defendants PICA, HP, and Kevin Hunsaker have filed answers to the complaint.

1 to drop Pinkerton Europe as a defendant, to add BRI and Pinkerton's, Inc. as new  
2 defendants, and to allege that BRI and Pinkerton's, Inc. are alter egos or agents of each  
3 other.

4 As plaintiff has not amended its complaint previously, it has not repeatedly failed to  
5 cure deficiencies by previous amendments. BRI does not contend that plaintiff engaged in  
6 undue delay or bad faith in seeking to amend, or that it would suffer undue prejudice if  
7 leave to amend were granted. Rather, BRI argues amendment would be futile because  
8 (1) the Court lacks personal jurisdiction over BRI, and (2) although BRI, in a corporate  
9 filing, identified Pinkerton's, Inc. as owner of all but one of BRI's shares, that filing was in  
10 error and BRI's shares are actually owned by Pinkerton Consulting & Investigations, Inc.  
11 Such factual defenses, however, can be tested by a new motion and, if appropriate,  
12 discovery, after the complaint is amended and the new defendants are served. See, e.g.,  
13 Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9<sup>th</sup> Cir. 1988) (reversing denial of motion  
14 for leave to amend complaint where "questions of fact must be resolved to determine"  
15 whether proposed amendment would be futile).

16 Accordingly, plaintiff's motion for leave to amend its complaint will be granted.

#### 17 **B. Motion to Dismiss**

18 As the Court is granting plaintiff's motion to amend its complaint to, inter alia, drop all  
19 causes of action asserted against Pinkerton Europe, BRI's motion to dismiss all such  
20 claims will be denied as moot.

#### 21 **C. Motion to Continue Hearings**

22 In light of the above rulings, there is no need for a hearing on the motion for leave to  
23 amend or the motion to dismiss and, accordingly, HP's motion to continue those hearings  
24 will be denied as moot.

### 25 **CONCLUSION**

26 For the reasons set forth above,

27 1. Plaintiff's motion for leave to amend its complaint is hereby GRANTED. Plaintiff  
28 shall file its amended complaint no later than February 23, 2007.


1           2. BRI's motion to dismiss all claims asserted against Pinkerton Europe is hereby  
2 DENIED as moot.

3           3. HP's motion to continue the hearings on the above-referenced motions is hereby  
4 DENIED as moot.

5           This order terminates Docket Nos. 16, 59, and 70.

6           **IT IS SO ORDERED.**

7 Dated: February 16, 2007

  
MAXINE M. CHESNEY  
United States District Judge